

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 24, 2008

**D050265      Helsper et al. v. County of San Diego**

Judgment affirmed. The County to recover its costs. Benke, Acting P.J.;  
We Concur: McDonald, J., McIntyre, J.

**D052123      In re J.H. et al., Juveniles**

The appeals are dismissed. Benke, Acting P.J.; We Concur: Huffman, J., Irion, J.

**D050659      Martin v. Barber et al.**

The judgment is affirmed. Defendants shall recover their costs on appeal (Rule 8.278(a).) Nares, J.; We Concur: McConnell, P.J., Benke, J.

**D051606      People v. Chavarria**

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.316.)

**D050041      Edwards, Sr. et al. v. Fire Insurance Exchange**

The order and judgment are affirmed. McIntyre, J.; We Concur: Haller, Acting P.J.,  
McDonald, J.

**D052546      Shannon R. et al. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Shannon R. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D052458      Fernanda L. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Fernanda L. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.

**D051185      People v. Tatum**

Affirmed. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: Nares, Acting P.J., Aaron J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 25, 2008

**D050514      Architect/Delawie Wilkes Rodrigues Barker v. Quest Construction Engineering & Management, Inc.**

The judgment is reversed and remanded, and the trial court is directed to set aside the order sustaining the demurrer without leave to amend and to hold further proceedings consistent with this opinion. Quest is awarded costs on appeal. Huffman, Acting P.J.; We Concur: McDonald, J., Aaron, J.

**D052101      In re Hill on Habeas Corpus**

The petition is denied.

**D050433      Qualcomm Incorporated v. Certain Underwriters At Lloyd's London**

The judgment is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Aaron, J.

**D048304      People v. Leon**

The judgment is reversed with respect to count 2. In all other respects, the judgment is affirmed. The sentence is vacated and the matter is remanded for resentencing in accordance with our directions in part III.D., *ante*. CERTIFIED FOR PUBLICATION Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D051245      Davis v. Davis**

The judgment is reversed. Suzanne is to recover her costs on appeal. McIntyre, J.; I Concur: Huffman, Acting P.J.; I Dissent (by opinion): McDonald, J.

**D049866      People v. Esparza**

The judgment is affirmed. Haller, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D048306      People v. Leon**

The judgment is affirmed. The sentence is vacated and the matter is remanded for resentencing in accordance with our directions in part III.H., *ante*. Aaron, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D049986      Baumgardner v. Yokoyama**

The judgment is affirmed. Dr. Yokoyama is entitled to costs on appeal. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

**D050736      O'Leary et al. v. California Department of Fish and Game**

The order setting aside the dismissal judgment is reversed. O'Leary to pay the Department's costs on appeal. Haller, J.; We Concur: Benke, Acting P.J., Huffman, J.

**D049905      Searles Valley Minerals v. State Board of Equalization**

The opinion filed February 26, 2008, is modified (no change in judgment). The petition for rehearing is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 25, 2008 (Continued)

**D052494      Katina L. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Katina L. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D052511      Stephen A. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Rebecca C. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D052535      Sandy W. et al. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency**

The attorney for petitioner Logan B. has notified the court that a petition for writ of mandate under California Rules of Court, rule 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is dismissed.

**D050307      England et al. v. Fisher Thurber LLP et al.**

The order overruling defendant Fisher and Fisher Thurber's demurrer is affirmed. Plaintiffs shall recover their costs on appeal. Nares, J.; We Concur: McConnell, P.J., Irion, J.

**D051831      In re Talon V., a Juvenile**

The judgment is affirmed. Benke, Acting P.J.; We Concur: Nares, J., McIntyre, J.]

**D049011      Bourdette et al. v. Gardality et al.**

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D049822      People v. Woodruff**

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., Haller, J.

**D050071      People v. Galashev**

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

**D052693      Griffin v. Superior Court of San Diego County/People**

The petition for writ of mandate has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron. The petition is denied.

**D049802      La Honda Development v. Kreusser**

Upon written stipulation filed by the parties to the appeal, the appeal is dismissed and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).) Each party to bear own costs on appeal.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 25, 2008 (Continued)

**D052125      In re Alarcon on Habeas Corpus**  
The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 26, 2008

**D052161      In re Madrid on Habeas Corpus**

The petition is denied.

**D052144      In re Mathis on Habeas Corpus**

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices Benke and Aaron.

Petitioner indicates that he pleaded guilty to second degree murder and voluntary manslaughter. He indicates that he was sentenced in 1993 to state prison for 15 years to life for the murder, and a concurrent term of six years for manslaughter. Petitioner indicates that he did not appeal.

Petitioner filed the instant habeas petition, which is largely incomprehensible. It appears petitioner believes the prosecutor promised him that he would serve only a 15-year base term, and that he would be released after serving that term. He claims that he was unaware that he could serve more than 15 years until he attended a Board of Prison Terms hearing on November 27, 2006, where he was informed of the indeterminate nature of his sentence.

Petitioner challenges the plea agreement he entered into in 1993. He has waited nearly 15 years to bring this petition, and it is therefore denied as untimely. Petitioner has not established an exception to the procedural bar. (*In re Robbins* (1998) 18 Cal.4th 770, 814, fn. 34; *In re Clark* (1993) 5 Cal.4th 750, 797-798; *In re Bower* (1985) 38 Cal.3d 865, 873, fn. 3.)

Even if we were to excuse petitioner's untimeliness, petitioner's claim would fail. Petitioner's supporting documentation, including the abstract of judgment and transcript from petitioner's 1993 sentencing, indicates that petitioner was "sentenced to state prison for the indeterminate term of 15 years to life."

There is nothing in the transcript or any other document petitioner attaches that indicates he was promised, or sentenced to anything but an indeterminate term. Because petitioner's claim that he was unaware of the indeterminate nature of his sentence is belied by his supporting documentation, he fails to state a prima facie case for relief. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474-475.)

The petition is denied.

**D049358      People v. Robinson**

The judgment is affirmed. Aaron, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

**D051360      Kingston et al. v. Kunit**

Upon written request filed by appellant George Kingston, the appeal is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D052249      Allen v. Jackson et al.**

Pursuant to California Rules of Court, rule 8.140, the appeal filed December 27, 2007, is DISMISSED for appellant's failure to timely designate the record (Cal. Rules of Court, rule 8.121(a)).

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 27, 2008

**D050830      In re Raymundo S., a Juvenile**

The order of wardship is affirmed. Benke, Acting P.J.; I Concur: Haller, J., I Concur In Result: McDonald, J.

**D049863      Jack v. Concordia Homes of California LLC et al.**

The order is affirmed. The parties shall bear their own costs on appeal. Huffman, J.; We Concur: Benke, Acting P.J., McIntyre, J.

**D050893      Carlton v. State of California Department of Motor Vehicles**

The orders are affirmed. McDonald, J.; I Concur: Haller, J., I Concur in the Result: Huffman, Acting P.J.

**D050705      In re Gabriel R., a Juvenile**

The judgment is reversed. McDonald, J.; We Concur: Benke, Acting P.J., Nares, J.

**D052499      City of San Diego v. Means**

Upon filing a written abandonment of appeal, the appeal as to appellant Tracy L. Means is DISMISSED and the remittitur is ordered to issue immediately. (Cal. Rules of Court, rule 8.244(c)(2).)

**D050446      Porter v. Valenti International Limited et al.**

Affirmed. Costs are awarded to respondents. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D050450      Duffens et al. v. Valenti et al.**

Affirmed. Costs are awarded to respondents. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: McIntyre, J., O'Rourke, J.

**D052550      Kizer v. Superior Court of San Diego County/Thompson et al.**

The petition is denied.

**D052552      Reliable Home Help Nurses Registry, Inc. et al. v. The Superior Court of San Diego County/Thompson et al.**

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE

March 27, 2008 (Continued)

**D049266      Vesco v. San Diego Community Correctional Center et al.**

The submission of the above-entitled cause on March 10, 2008, is VACATED to allow for supplemental briefing. The parties are directed to file simultaneous supplemental letter briefs, no later than April 14, 2008, addressing the following:

1. Because by statutory definition a partnership cannot exist absent an "association of two or more persons to carry on as co-owners a business for profit . . ." (Corp. Code, §§ 16101, subd. (9); 16202), and once Vesco left the San Diego Community Correctional Center (SDCCC) partnership there thus could be no partnership to carry on a business, was it proper for the court to apply the provisions of section 16701 respecting the buy out of a dissociating partner to this case?

2. If not, what, if any, is the effect on the judgment in this case?

3. Would it be appropriate for the appraiser to consider Lulu Porter's capital account in reaching a value of the SDCCC partnership as a going concern, as opposed to setting it off against the buyout price after the value of the partnership is determined?

4. Did the appraiser in this matter consider Porter's capital account in determining the value of SDCCC as a going concern?

Upon completion of briefing the cause is resubmitted. (Cal. Rules of Court, rule 8.256(e)(1))

**D059563      Zagami, Inc. v. Crone, Inc.**

**D050090      Zagami, Inc. v. Crone, Inc.**

The petition for rehearing is denied.

**D051023      In re Botello on Habeas Corpus**

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Justices O'Rourke and Aaron. The petition is denied.

**D049915      Kassab v. San Diego Police Department et al.**

The petition for rehearing is denied. The motion to augment and request for judicial notice are denied.

**D052683      People v. Story**

The petition is denied.

**D051012      Laigo v. Mahoney et al.**

Respondent's unopposed motion to dismiss the appeal is granted. The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE  
March 28, 2008

**D051104        Gallagher v. Community Connection Resource Center, Inc.**

**D051746        Gallagher v. Community Connection Resource Center, Inc.**

The parties' stipulation to consolidate the above-entitled appeals is accepted. The remaining briefs due in appeal D051746 shall be filed under that number. Upon completion of briefing in appeal D051746, all future documents will be filed under D051104.

**D049993        People v. Smith**

The opinion filed March 5, 2008, is ordered certified for publication.

**D052206        In re Valdez on Habeas Corpus**

The petition is denied.

**D050489        Tillman et al. v. Petrus Jr., et al.**

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Haller, J.

**D049362        People v. Botello**

The judgment is affirmed. McConnell, P.J.; We Concur: O'Rourke, J., Aaron, J.

**D050107        Samber, Inc. v. City of Oceanside et al.**

The judgment of the trial court is reversed. The matter is remanded to the trial court with instructions to grant the petition for writ of mandamus. Appellant is entitled to costs on appeal. Aaron, J.; We Concur: McConnell, P.J., McDonald, J.

**D050119        Garcia v. GMS Janitorial Services, Inc.**

The judgment is affirmed; the motion for sanctions is denied. GMS is awarded its costs of appeal. McIntyre, J.; We Concur: McDonald, Acting P.J., Aaron, J.

**D051268        People v. Jonescue**

Judgment affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Nares, J.

**D052196        In re Castillo on Habeas Corpus**

The petition is denied.

**D052542        Yaghaira C. v. Superior Court of San Diego County/San Diego County  
Health and Human Services Agency**

The attorney for petitioner Yaghaira C. has notified the court that a petition for writ of mandate under California Rules of Court, rules 8.452 and 5.600 will not be filed as there are no viable issues for writ review. The case is DISMISSED.